
SENATE BILL No. 451

DIGEST OF INTRODUCED BILL

Citations Affected: IC 10-1-2; IC 20-12-19.5-3.

Synopsis: State police disability program. Establishes a line of duty and a not in the line of duty disability pension for regular police employees of the state police department (ISP). Provides for a waiver of tuition and mandatory fees at any state supported college, university, or technical school for the child or spouse of a regular, paid ISP police employee who has been permanently and totally disabled by a catastrophic personal injury that was sustained in the line of duty and that permanently prevents the employee from performing any gainful work.

Effective: July 1, 2002.

Wyss, Blade

January 14, 2002, read first time and referred to Committee on Pensions and Labor.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE BILL No. 451

A BILL FOR AN ACT to amend the Indiana Code concerning state police, civil defense and military affairs.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 10-1-2-1.2 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2002]: **Sec. 1.2. (a) As used in this chapter, the "Americans with**
4 **Disabilities Act" means the federal Americans with Disabilities Act**
5 **(42 U.S.C. 12101, et seq.) and the regulations and amendments**
6 **related to that act.**

7 **(b) As used in this chapter, "board" refers to the pension**
8 **advisory board referred to in section 2 of this chapter.**

9 **(c) As used in this chapter, "covered impairment" means an**
10 **impairment that permanently or temporarily makes an employee**
11 **beneficiary unable to perform the essential function of the**
12 **employee beneficiary's duties with the department, considering**
13 **reasonable accommodation to the extent required by the**
14 **Americans with Disabilities Act. However, a covered impairment**
15 **does not include an impairment:**

16 **(1) that results from an intentionally self-inflicted injury or**
17 **attempted suicide while sane or insane;**



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(2) that results from the employee beneficiary's commission or attempted commission of a felony; or

(3) that is occasioned, in whole or in part, by the employee beneficiary currently engaging (as defined in 29 CFR 1630.3, Appendix) in any of the following:

(A) Use of a controlled substance (as defined in the Controlled Substances Act (21 U.S.C. 812)).

(B) Unlawful use of a prescription drug.

SECTION 2. IC 10-1-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. ~~(a) As used in this section, the "Americans with Disabilities Act" means the Americans with Disabilities Act (42 U.S.C. 12101, et seq.) and the regulations and amendments related thereto.~~

~~(b) (a)~~ Authority is hereby granted to the department to establish, operate, and make necessary contributions to a disability reserve account for the payment of disability expense reimbursement and pension to disabled employee beneficiaries. ~~No monthly disability pension shall exceed the maximum basic pension amount. However, in the case of disability incurred in line of duty, such employee beneficiary may receive not more than forty dollars (\$40) per month for each dependent parent and dependent child less than eighteen (18) years of age, in addition to the monthly disability pension payment under this chapter. Time in disability pension status shall be deemed qualifying active service for purposes of calculating retirement pension. and retirement pension contributions in the amount prevailing at the commencement of disability leave shall be withheld from monthly disability pension payments rather than from wages for the duration of disability leave.~~

~~(c) (b)~~ This section shall be administered in a manner that is consistent with the Americans with Disabilities Act, to the extent required by such act.

~~(d) (c)~~ A disability payment made under this chapter is worker's compensation in lieu of a payment under IC 22-3-2 through IC 22-3-7.

SECTION 3. IC 10-1-2-4.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4.1. (a) Upon a request from an employee beneficiary or from the department, the board shall conduct a hearing under section 4.2 of this chapter to determine whether the employee beneficiary has a covered impairment.

(b) If the board determines that a covered impairment exists, the department shall submit to the board written determinations of the following:

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(1) Whether there is suitable and available work in the department for which the employee beneficiary is or may be capable of becoming qualified, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

(2) The employee beneficiary's years of service with the department.

(c) At the same hearing where the determination of whether the employee beneficiary has a covered impairment is made, the board shall determine the following:

(1) Whether the employee beneficiary has a Class 1 impairment. A Class 1 impairment is a covered impairment that is the direct result of one (1) or more of the following:

(A) A personal injury that occurs while the employee beneficiary is on duty.

(B) A personal injury that occurs while the employee beneficiary is off duty and is responding to an offense or a reported offense.

(C) An occupational disease (as defined in IC 22-3-7-10).

(2) Whether the employee beneficiary has a Class 2 impairment. A Class 2 impairment is a covered impairment that is a duty related disease. A duty related disease means a disease arising out of the employee beneficiary's employment. A disease shall be considered to arise out of the employee beneficiary's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(A) there is a connection between the conditions under which the employee beneficiary's duties are performed and the disease;

(B) the disease can be seen to have followed as a natural incident of the employee beneficiary's duties as a result of the exposure occasioned by the nature of the employee beneficiary's duties; and

(C) the disease can be traced to the employee beneficiary's employment as the proximate cause.

(3) Whether the employee beneficiary has a Class 3 impairment. A Class 3 impairment is a covered impairment that is not a Class 1 impairment or a Class 2 impairment.

(d) A covered impairment that is both:

(1) the direct result of an occupational disease under subsection (c)(1)(C); and

(2) a duty related disease under subsection (c)(2);

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shall be considered a Class 1 impairment.

(e) If the board determines that the employee beneficiary has a Class 1 or Class 2 impairment, at the same hearing where the determination of the class of impairment is made, the board also must determine the employee beneficiary's degree of impairment as required by section 4.4(d) of this chapter.

SECTION 4. IC 10-1-2-4.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4.2. (a) This section applies to hearings conducted by the board concerning determinations of impairment under this chapter.

(b) At least five (5) days before the hearing, the board shall give notice to the employee beneficiary and the department of the time, date, and place of the hearing.

(c) The board must hold a hearing not more than ninety (90) days after the employee beneficiary requests the hearing.

(d) At the hearing, the board shall permit the employee beneficiary and the department to:

- (1) be represented by any individual;
- (2) through witnesses and documents, present evidence;
- (3) conduct cross-examination; and
- (4) present arguments.

(e) At the hearing, the board shall require all witnesses to be examined under oath, which may be administered by a member of the board.

(f) The board shall, at the request of the employee beneficiary or the department, issue:

- (1) subpoenas;
- (2) discovery orders; and
- (3) protective orders;

in accordance with the Indiana Rules of Trial Procedure that govern discovery, depositions, and subpoenas in civil actions.

(g) The board shall have the hearing recorded so that a transcript may be made of the proceedings.

(h) After the hearing, the board shall make its determinations, including findings of fact, in writing and shall provide copies of its determinations to the employee beneficiary and the department not more than thirty (30) days after the hearing.

(i) If the board:

- (1) does not hold a hearing within the time required under subsection (c); or
- (2) does not issue its determination within the time required

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under subsection (h);
the employee beneficiary shall be considered to be disabled and to have a Class 1 impairment.

(j) The board may on its own motion issue:

- (1) subpoenas;
- (2) discovery orders; and
- (3) protective orders;

in accordance with the Indiana Rules of Trial Procedure that govern discovery, depositions, and subpoenas in civil actions.

(k) At the hearing, the board may exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on the basis of evidentiary privilege recognized by the courts.

(l) At the hearing, the board may request the testimony of witnesses and the production of documents.

(m) If a subpoena or order is issued under this section, the party seeking the subpoena or order shall serve it in accordance with the Indiana Rules of Trial Procedure. However, if the subpoena or order is on the board's own motion, the sheriff of the county in which the subpoena or order is to be served shall serve it. A subpoena or order issued under this section may be enforced in the circuit or superior court of the county in which the subpoena or order is served.

(n) The determination of the board after a hearing is final and may be appealed to the court.

(o) To the extent required by the Americans with Disabilities Act, the transcripts, records, reports, and other materials generated as a result of a hearing or review conducted to determine an impairment under this chapter must be:

- (1) retained in the separate medical file created for the employee beneficiary; and
- (2) treated as a confidential medical record.

SECTION 5. IC 10-1-2-4.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4.3. (a) Not more than once every twelve (12) months after an employee beneficiary is determined to have a covered impairment under this chapter, the board may seek a review of the employee beneficiary's impairment.

(b) A review conducted under this section may relate to whether a covered impairment continues to exist, whether the degree of impairment has changed, and any other matter considered appropriate by the board.

(c) The board shall conduct a hearing under section 4.2 of this



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chapter to determine the matters raised by a review conducted under this section.

(d) The costs of a medical examination required by the board shall be paid by the board.

SECTION 6. IC 10-1-2-4.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4.4. (a) An employee beneficiary:

(1) who is determined to have a Class 1 impairment; and

(2) for whom it is determined that there is no suitable and available work in the department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

is entitled to a monthly base benefit equal to fifty percent (50%) of the monthly salary of an employee with the same rank and years of service as the employee beneficiary. Time in disability status must be included in determining the years of service under this subsection.

(b) An employee beneficiary:

(1) who is determined to have a Class 2 impairment; and

(2) for whom it is determined that there is no suitable and available work in the department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

is entitled to a monthly base benefit equal to forty percent (40%) of the monthly salary of an employee with the same rank and years of service as the employee beneficiary. Time in disability status must be included in determining the years of service under this subsection.

(c) An employee beneficiary:

(1) who is determined to have a Class 3 impairment; and

(2) for whom it is determined that there is no suitable and available work in the department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

is entitled to a monthly base benefit equal to the maximum basic pension amount as determined under IC 10-1-2.2-7, if the employee beneficiary is covered under the pre-1987 benefit system, or under IC 10-1-2.3-7, if the employee beneficiary is covered under the 1987 benefit system.

(d) If an employee beneficiary is entitled to a monthly base benefit under subsection (a) or (b), the employee beneficiary is also entitled to an additional monthly amount that is not less than ten

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percent (10%) and not greater than twenty-eight and one-half percent (28.5%) of the monthly salary of an employee with the same rank and years of service as the employee beneficiary. Time in disability status must be included in determining the years of service under this subsection. The additional monthly amount must be determined by the board based on the employee beneficiary's degree of impairment.

(e) When an employee beneficiary who receives a disability benefit under this section as the result of a Class 1, Class 2, or Class 3 impairment and who is covered by the pre-1987 benefit system (described in IC 10-1-2.2) becomes sixty (60) years of age, the employee beneficiary is entitled to receive the retirement benefit payable to an employee beneficiary with:

(1) twenty (20) years of service; or

(2) the total years of service and salary, as of the year the employee beneficiary becomes sixty (60) years of age, that the employee beneficiary would have earned if the employee beneficiary had remained in active service until becoming sixty (60) years of age;

whichever is greater. If the employee beneficiary is credited with thirty-four (34) years of service before becoming sixty (60) years of age, the employee beneficiary, when the employee beneficiary becomes sixty (60) years of age, is entitled to receive the retirement benefit payable to an employee with thirty-four (34) years of service.

(f) When an employee beneficiary who receives a disability benefit under this section as the result of a Class 1 or Class 2 impairment and who is covered by the 1987 benefit system (described in IC 10-2-2.3) becomes sixty (60) years of age, the employee beneficiary is entitled to receive the retirement benefit payable to an employee beneficiary with:

(1) twenty-five (25) year of service; or

(2) the total years of service and salary, as of the year the employee beneficiary becomes sixty (60) year of age, that the employee beneficiary would have earned if the employee beneficiary had remained in active service until becoming sixty (60) years of age;

whichever is greater. If the employee beneficiary is credited with thirty-four (34) years of service before becoming sixty (60) years of age, the employee beneficiary, when the employee beneficiary becomes sixty (60) years of age, is entitled to receive the retirement benefit payable to an employee with thirty-four (34) years of

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1 service.

2 (g) When an employee beneficiary who receives a disability
3 benefit under this section as the result of a Class 3 impairment and
4 who is covered by the 1987 benefit system (described in
5 IC 10-2-2.3) reaches twenty-five (25) years of service, the employee
6 beneficiary is entitled to receive the retirement benefit payable to
7 an employee beneficiary with twenty-five (25) years of service. If
8 an employee beneficiary covered by the 1987 benefit system
9 (described in IC 10-2-2.3) has more than twenty-five (25) years of
10 service at the time the employee beneficiary is determined to have
11 a covered impairment, the employee beneficiary is entitled to
12 receive the retirement benefit payable to an employee with the
13 same years of service and salary as the employee beneficiary on the
14 date the employee beneficiary is determined to have a covered
15 impairment.

16 (h) In addition of the benefits provided in this section, for the
17 period of the employee beneficiary's disability leave, the
18 department shall pay the employee beneficiary's pension
19 contributions in the amount prevailing at the time the employee
20 beneficiary is determined to have a covered impairment.

21 SECTION 7. IC 20-12-19.5-3 IS ADDED TO THE INDIANA
22 CODE AS A NEW SECTION TO READ AS FOLLOWS
23 [EFFECTIVE JULY 1, 2002]: Sec. 3. The child or spouse of a
24 regular, paid police employee of the state police department who
25 has been permanently and totally disabled by a catastrophic
26 personal injury that was sustained in the line of duty and that
27 permanently prevents the employee from performing any gainful
28 work may not be required to pay tuition or mandatory fees at any
29 state supported college, university, or technical school, if:

- 30 (1) the child is less than twenty-three (23) years of age and is
31 a full-time student pursuing a prescribed course of study; or
32 (2) the spouse is pursuing a prescribed course of study toward
33 an undergraduate degree.

34 SECTION 8. [EFFECTIVE JULY 1, 2002] IC 10-1-2-4.1,
35 IC 10-1-2-4.2, IC 10-1-2-4.3, and IC 10-1-2-4.4, all as added by this
36 act, apply to all regular police employees of the state police
37 department after June 30, 2002.

38 SECTION 9. [EFFECTIVE JULY 1, 2002] IC 20-12-19.5-3, as
39 added by this act, applies to the child or spouse of a regular, paid
40 police employee of the state police department if the regular police
41 employee of the state police department was permanently and
42 totally disabled by a catastrophic personal injury that:



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- 1 **(1) was sustained in the line of duty; and**
- 2 **(2) permanently prevents the employee from performing any**
- 3 **gainful work;**
- 4 **before, on, or after July 1, 2002.**

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